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*Governor Arnold Schwarzenegger, California*  
9 *Department of Fish & Game, and Donald Koch*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

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14 **PUBLIC LANDS FOR THE PEOPLE,**  
15 **INC., et al.,**  
16  
17 **v.**  
18 **STATE OF CALIFORNIA, ARNOLD**  
19 **SCHWARZENEGGER, in his official**  
20 **capacity as Governor of the State of**  
21 **California; CALIFORNIA DEPARTMENT**  
22 **OF FISH & GAME, and DONALD KOCH,**  
23 **in his official capacity as Director,**  
**California Department of Fish & Game; and**  
**Does 1-20,**  
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**NOTICE OF MOTION AND MOTION  
TO DISMISS (FRCP 8, 12(b)(1), 12(b)(6),  
Eleventh Amendment, and *Younger v.  
Harris*), and/or TO STRIKE (FRCP 12(f)),  
and/or FOR A MORE DEFINITE  
STATEMENT (FRCP 12(e))**

Date: February 25, 2009  
Time: 2:00 p.m.  
Judge: Hon. Morrison C. England  
Trial Date: n/a  
Action Filed: Sept. 14, 2009

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 25, 2009 at 2:00 p.m., or as soon thereafter as  
3 counsel may be heard by the above-titled court, located at 501 I Street, Sacramento, California, in  
4 the courtroom of Judge Morrison C. England:

5 DEFENDANTS WILL AND HEREBY DO MOVE, pursuant to Federal Rule of Civil  
6 Procedure 12(b)(1) and 12(b)(6) for a judgment dismissing (a) this action in its entirety as against  
7 Defendants the State of California and the California Department of Fish and Game (“DFG”); (b)  
8 all claims for damages, including Count XI of the complaint and paragraph 4 of the Prayer for  
9 Relief; (c) all claims based on alleged violation of state law, specifically claims based on state  
10 nuisance law (Complaint ¶¶ 8(K) & (L)), and claims based on alleged violation of the California  
11 Constitution (Complaint ¶¶ 8(O) & (P), and Counts II, III, and IV, alleging violation of Article I  
12 sections 7(a) and 19 of the California Constitution). This motion is made on the ground that all  
13 claims against the State and the Department of Fish and Game are barred by the Eleventh  
14 Amendment of the United States Constitution; and all claims for violation of state law and/or for  
15 damages against all defendants are barred by the Eleventh Amendment.

16 IN THE ALTERNATIVE DEFENDANTS WILL AND HEREBY DO MOVE, pursuant to  
17 Federal Rule of Civil Procedure 12(f) for an order striking the claims described above.

18 DEFENDANTS FURTHER MOVE, this Court to abstain in accordance with *Younger v.*  
19 *Harris*, 401 U.S. 37 (1971), because of an ongoing state court action.

20 DEFENDANTS FURTHER MOVE, pursuant to Federal Rule of Civil Procedure 12(b)(1),  
21 that this entire action be dismissed as to all defendants on the ground that Plaintiffs lack standing  
22 to bring this action.

23 DEFENDANTS FURTHER MOVE, pursuant to Federal Rules of Civil Procedure 8 and  
24 12(b)(6) for a judgment dismissing Counts II, III, IV, and IX of the Complaint (Claims violation  
25 of Due Process, Equal Protection, Takings, and the Commerce Clause), on the ground that the  
26 Complaint fails to state a claim for which relief may be granted as to each of these Counts, as  
27 detailed in the Memorandum of Points and Authorities filed herewith.

28

1 DEFENDANTS FURTHER MOVE, pursuant to Federal Rules of Civil Procedure 8,  
2 12(b)(6), and 12(e), for a judgment dismissing Counts I, V, VI, VII, and VIII (Preemption,  
3 violation of 42 U.S.C. § 1983, violation of 30 U.S.C. § 21a, violation of 30 U.S.C. §§ 22-54, and  
4 violation of an implied right “to use public lands”), or in the alternative for a more definite  
5 statement of these claims. This Motion is made on the ground that the cited paragraphs are  
6 immaterial, redundant, and unintelligible in violation of Rule 8(a), and under prevailing law this  
7 Court may order any or all of the relief Defendants request. This motion is made on the ground  
8 that the Complaint fails to state a claim for which relief may be granted as to each of these claims,  
9 and/or the allegations in the complaint pertaining to these claims are so prolix, confusing,  
10 redundant, and frivolous that Defendants cannot reasonably prepare a response.

11 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and  
12 Authorities and Request for Judicial Notice filed herewith, and such other evidence and argument  
13 as the Court may consider.

14  
15 Dated: November 24, 2009

Respectfully Submitted,

16 EDMUND G. BROWN JR.  
17 Attorney General of California  
18 ROBERT W. BYRNE  
19 Supervising Deputy Attorney General  
20 BRADLEY SOLOMON, State Bar No. 140625  
21 BARBARA SPIEGEL, State Bar No. 144896  
22 MICHAEL M. EDSON, State Bar No. 177858  
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25 /s/ Michael M. Edson  
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California Department of Fish & Game, and  
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